

REMARKS

In the outstanding Official Action, claims 2-16 were rejected on the ground of nonstatutory obviousness-type double patenting over claims 1-32 of U.S. Patent No. 6,415,254.

Upon entry of the present amendment, claim 2 will have been amended to include features similar to those previously recited in the combination of claim 3, claim 7 will have been amended to include features similar to those previously recited in the combination of claim 8, and claim 12 will have been amended to include features similar to those previously recited in the combination of claim 13. Claims 3, 8 and 13 will have been cancelled without prejudice to or disclaimer of the subject matter recited therein. Claims will also have been amended to eliminate informalities.

The amendment of claims 2, 7 and 12 and cancellation of claims 3, 8 and 13 should not be considered an indication of Applicants' acquiescence as to the propriety of the outstanding rejection. Rather, Applicants have amended the claims to advance prosecution of the present application and to obtain early allowance of the claims now pending.

Applicants traverse the outstanding double-patenting rejection. In this regard, the outstanding Official Action asserts that the features of, e.g., previous claims 2, 7 and 12 are the subject of claims 1, 31, 32 and 12 in U.S. Patent No. 6,415,254. However, no combination of any single claim in U.S. Patent No. 6,415,254, whether independent or dependent, discloses, suggests or renders obvious the combination of features recited in amended claims 2, 7 and 12.

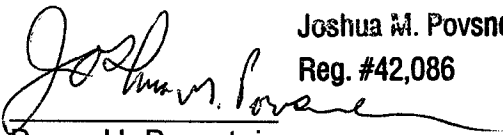
That is, the combination of claims 12, 11, 3 and 1 in U.S. Patent No. 6,415,254 does not include any combination of features that include storing “a plurality of fixed dispersion patterns” and determining “a selected dispersion pattern of the plurality of fixed dispersion patterns with reference to an adaptive codebook gain” as recited in amended claim 2 of the present application. Further, one of ordinary skill in the art would not have been properly motivated to obtain the combination of amended claim 2 of the present application using any single claim of U.S. Patent No. 6,415,254, whether independent or dependent. That is, there is no proper motivation to modify any single claim of U.S. Patent No. 6,415,254, whether independent or dependent, such that the combination of features recited in amended claim 2 would result.

Accordingly, independent claim 2 is allowable over U.S. Patent No. 6,415,254 under the judicially created doctrine of obviousness-type double patenting. Independent claims 7 and 12 are also allowable over U.S. Patent No. 6,415,254 under the judicially created doctrine of obviousness-type double patenting for reasons similar to those set forth above with respect to independent claim 2. Additionally, claims 4-6, 9-11 and 14-16 are allowable at least for depending, directly or indirectly, from an allowable independent claim, as well as for additional reasons related to their own recitations. Accordingly, entry and consideration of the present amendment, reconsideration of the outstanding rejection, and allowance of the present application and all of the claims now pending are respectfully requested and believed to be appropriate.

Any amendments to the claims which have been made in this amendment, and which have not been specifically noted to overcome a rejection based upon the prior art, should be considered to have been made for a purpose unrelated to patentability, and no estoppel should be deemed to attach thereto.

Should there be any questions, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully Submitted,
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